

Application No.: 10/674,622

Docket No.: 66205-0001

**REMARKS**

Applicant has reviewed the detailed Office Action mailed November 26, 2004 and thanks Examiner Szumny for his review of the same. Claims 1-10 were rejected. Claims 1 \_\_ and have been amended. These claims have been amended without adding new matter. Claims 8-10 are cancelled. Thus, claims 1-7 will be pending upon entry of this amendment. Applicant requests reconsideration of the pending claims in view of the above amendments and the following remarks.

**Claim Rejections – 35 USC §102**

Claims 8-10 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 5,655,673 to Weterrings et al. Applicant has canceled these claims. According, the rejection is moot.

Claims 1, 2, 3, 5, and 7 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,921,690 to Smith et al. Applicant respectfully traverses the rejection.

Claim 1, as amended, requires a retainer for securing and suspend a bottom having an upper portion that carries a cap and a lower portion. The claimed retainer also requires at least two generally horizontal, substantially parallel arms that extend from a base to form at least one through opening therebetween that is uncovered such that the opening is unobstructed and may suspend a lower portion of a bottle such that the upper portion of the bottle is engaged by the arms to support the bottle within the opening. In accordance with the invention, the top portion is located above the arms such that the arms engage under the top portion and extend in a groove defined between the lower portion and the cap of the top portion.

In contrast to the claimed invention, Smith et al. does not disclose a bottle retainer capable of retaining a bottle in the manner as claimed by the applicant in claims 1, 2, 3, 5, and 7. Instead, Smith et al. discloses a bracket with upper and lower plates that are attached to one another by a connecting portion on the front side of the bracket assembly (Col. 2, lines 12- 18, *see also* Figs. 2 and 3). The upper plate of Smith et al. clearly prevents mounting a bottle having a cap, as positively claimed by Applicant. Indeed, Smith et al. teaches away from the claimed invention because Smith et al. provides for a flat plate 14 that covers the opening of the containers.

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Nor does Smith et al. provide at least one opening having no covering members such that the opening has no obstructions, where the opening may receive a bottle with the cap being positioned above the arms and the lower portion being suspended from the arms. Indeed, Smith et al. specifically requires a covering plate that obstructs the opening. For this reason alone claim 1 is patentable over Smith et al. Accordingly, claim 1 is patentable over the applied art.

In addition, dependant claims 2, 3, 5, and 7 are also patentable over the applied art because they depend from an allowable claim. Accordingly, Applicant respectfully requests the withdrawal of the rejection.

#### **Claim Rejections – 35 USC §103**

Claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. in view of Wetterrings et al. Applicant respectfully traverses the rejection. As set forth above, Smith does not disclose at least one opening having no covering members such that the opening has no obstructions. Indeed, Smith teaches away from such a construction by requiring a covering plate 14. Further, Smith also fails to disclose a retainer member that suspends a bottle by arms that engage a groove formed between a cap and a lower portion of the bottle, as specifically claimed by Applicant. Because claim 4 depends from claim 1, which is clearly allowable over Smith, claim 4 is patentable as well.

Claim 6 was rejected under 35 U.S.C. 103(a) as being unpatentable over Smith in view of Flynn. The arguments above in connection with the claim rejections under 102(b) are equally applicable here. Moreover, Flynn does not make up for the deficiencies of Smith et al. Indeed, Flynn does not disclose a bottle retainer with generally horizontal, substantially parallel arms. Accordingly, Applicant respectfully requests the withdrawal of the rejection.

#### **CONCLUSION**

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. 66205-0001 from which the undersigned is authorized to draw.

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Respectfully submitted,

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